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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2019 AUG 26 PM 3:10

STATE OF WEST VIRGINIA, ex rel.,
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

G. ISAAC SPONAUGLE, III, West
Virginia citizen and taxpayer, PETITIONER,

VS. CIVIL ACTION NO:
2018-P-442

JAMES CONLEY JUSTICE, II,
Governor of the State of West
Virginia, RESPONDENT.

HEARING

Transcript of the proceedings had in the hearing
of the above-styled action before the Honorable Charles E.
King, Judge, on Wednesday, the 21st day of August, 2019.

APPEARANCES:

On Behalf of the Petitioner:

G. ISAAC SPONAUGLE, III, ESQUIRE
Sponaugle & Sponaugle Attorney's at Law
P.O. Box 578
Franklin, West Virginia 26807

Petitioner, G. ISAAC SPONAUGLE, present in person.

On behalf of the Respondent:

MICHAEL W. CAREY, ESQUIRE
DAVID R. POGUE, ESQUIRE
Carey, Scott, Douglas & Kessler, PLLC
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2 McGuire Woods, LLP
3 2001 K Street, NW
4 Suite 400
5 Washington, DC 20006
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23 Chelsea Sivori, Official Reporter
24 Thirteenth Judicial Circuit

11:20:

CHELSEA SIVORI COURT REPORTER

1	THE COURT: Keep your seats.	11:20:
2	Keep your seats, please.	11:20:
3	Mr. Sponaugle?	11:20:
4	MR. SPONAUGLE: Yes, Judge.	11:20:
5	THE COURT: Pardon?	11:20:
6	MR. SPONAUGLE: I said, yes, Judge.	11:20:
7	THE COURT: Mr. Carey?	11:20:
8	MR. CAREY: Yes, Judge.	11:20:
9	THE COURT: Come on up.	11:21:
10	Have a seat.	11:21:
11	MR. SPONAUGLE: How are you doing today?	11:21:
12	THE COURT: A little under the weather lately.	11:21:
13	MR. SPONAUGLE: Worst time to get it in the summer.	11:21:
14	THE COURT: Okay. You-all want to make your	11:21:
15	appearances, please.	11:21:
16	MR. CAREY: Mike Carey on behalf of respondent, Your	11:21:
17	Honor. George Terwilliger on behalf of the respondent.	11:21:
18	And David Pogue on behalf of the respondent.	11:21:
19	THE COURT: Mr. Terwilliger, good to see you, sir.	11:21:
20	MR. TERWILLIGER: Good to see you, Judge.	11:21:
21	Thank you for allowing me to appear.	11:21:
22	THE COURT: No problem.	11:21:
23	MR. SPONAUGLE: Isaac Sponaugle on behalf of myself,	11:21:
24	Your Honor.	11:21:

1 THE COURT: All right. The reason I wanted you-all 11:21:0
2 here today was to debate/discuss, Mr. Carey, your request 11:21:0
3 for these certified questions. 11:22:0

4 MR. CAREY: Yes, Your Honor. 11:22:0

5 THE COURT: Or alternatively, I guess, a more detailed 11:22:0
6 order -- 11:22:0

7 MR. CAREY: Yes, Your Honor. 11:22:0

8 THE COURT: -- denying your motion. 11:22:0

9 MR. CAREY: Yes, Your Honor. 11:22:0

10 THE COURT: Are you the still the same frame of mind? 11:22:0

11 MR. CAREY: Yes, Your Honor. 11:22:0

12 THE COURT: I've looked at your request for the 11:22:0
13 certified questions. 11:22:0

14 Mr. Sponaugle, did you file a response to them, 11:22:0
15 sir? 11:22:0

16 MR. SPONAUGLE: I did. I -- 11:22:0

17 THE COURT: I didn't see it. 11:22:0

18 MR. SPONAUGLE: -- it should have came in the mail last 11:22:0
19 week. 11:22:0

20 THE COURT: I haven't seen it. 11:22:0

21 Did you send a copy to me? 11:22:0

22 MR. SPONAUGLE: No. I sent -- I sent it to the clerk. 11:22:0

23 THE COURT: Well, I never know when somebody sends 11:22:0
24 something to the clerk. 11:22:0

1 MR. SPONAUGLE: Here's my -- I'm opposed to both of
2 them.

3 THE COURT: You're opposed to what?

4 MR. SPONAUGLE: I'm opposed to certified questions and
5 the -- well, I didn't really have a position on the order.
6 That's up to the discretion of the Court. How the Court
7 wants to do the order -- but on the certified questions.

8 THE COURT: What's this? What did you hand -- a
9 response to motion to dismiss.

10 MR. SPONAUGLE: No. I'm sorry. Judge, give me a
11 second.

12 THE COURT: Yeah. Go ahead.

13 MR. SPONAUGLE: There it is. I'll swap you.

14 THE COURT: Sir?

15 MR. SPONAUGLE: I said I'll swap you papers. There you
16 go, Judge.

17 THE COURT: Other than the media here, is somebody -- I
18 see you got -- are you recording any of this, sir?

19 You.

20 MR. MCELHINNY: Me?

21 THE COURT: Yeah.

22 MR. MCELHINNY: I was taking your picture.

23 THE COURT: Oh, that's all right.

24 MR. MCELHINNY: Yeah. Judge, I was just taking your

1	picture.	11:24:00
2	THE COURT: Why?	11:24:00
3	MR. MCELHINNY: Well, it's -- it's of news value.	11:24:00
4	THE COURT: To who?	11:24:00
5	MR. MCELHINNY: West Virginia Metro News, sir.	11:24:00
6	I'm Brad Mcelhinny.	11:24:00
7	THE COURT: Oh, that's right. You used to be the	11:24:00
8	publisher of the Daily Mail.	11:24:00
9	MR. MCELHINNY: Well, yeah. Back a lifetime ago.	11:24:00
10	THE COURT: It wasn't that long ago.	11:24:00
11	MR. MCELHINNY: Back in newspapers times.	11:24:00
12	THE COURT: Pardon?	11:24:00
13	MR. MCELHINNY: Yes, sir..	11:24:00
14	THE COURT: Yeah. Is your wife Karen Mcelhinny?	11:24:00
15	MR. MCELHINNY: Well, would you hold it against her if	11:24:00
16	she was?	11:24:00
17	THE COURT: No.	11:24:00
18	MR. MCELHINNY: Okay. Well, then she is.	11:24:00
19	THE COURT: Yeah. She hasn't been in here in a while,	11:24:00
20	but she has appeared here before me several times.	11:24:00
21	MR. MCELHINNY: I bet she misses you.	11:24:00
22	THE COURT: I don't know about that.	11:24:00
23	MR. MCELHINNY: Thank you, Judge.	11:24:00
24	THE COURT: Well, I didn't recognize you. I'm sorry,	11:24:00

1 Brad. 11:24:4

2 MR. MCELHINNY: Oh, that's quite all right. I didn't 11:24:4
3 intend to take part today. 11:24:4

4 THE COURT: Let me start with you, Mr. Sponaugle. 11:24:5

5 MR. SPONAUGLE: Yes. 11:24:5

6 THE COURT: I have not read your response having just 11:24:5
7 been given a copy of it. Looks like it's relatively short. 11:24:5

8 Why do you oppose the certified questions? 11:25:0

9 MR. SPONAUGLE: Well, I can -- I can do it basically on 11:25:0
10 -- on two points. One, there's a factual dispute between 11:25:0
11 us based on their answers and where we are. Mr. Justice 11:25:0
12 denies that he doesn't reside in the seat of the 11:25:0
13 government. He denies that he does -- he doesn't reside -- 11:25:0
14 or he does reside at Lewisburg, West Virginia, Greenbrier 11:25:0
15 County. Any test that you're going to do in regard to 11:25:0
16 residency we're going to have to fix out those facts. 11:25:0

17 But, primarily, I'll tell you why -- why -- to 11:25:0
18 the Court -- last fall I filed an original writ of mandamus 11:25:0
19 -- original jurisdiction writ of mandamus with the West 11:25:0
20 Virginia Supreme Court. They denied it at that time. 11:25:0
21 Denied it without prejudice. They have -- they could have 11:25:0
22 denied it with prejudice and basically shot all these legal 11:25:0
23 issues down. They are the same arguments based -- in 11:25:0
24 essence -- same arguments that are being presented back 11:25:0

1 then are being presented now. And that implies that they 11:25:1
2 want the discovery process completed in the circuit court 11:25:1
3 prior to weighing in on it. I'm sure they're going to 11:25:1
4 weigh in at some point in time, but we're going to have to 11:26:0
5 get -- you're going to -- you're going to have to build a 11:26:0
6 record before us -- make your rulings, but there's going to 11:26:0
7 have to be some evidence presented so they can look at it, 11:26:0

8 So I think -- I don't believe they're going to 11:26:1
9 take it up. I think it's a waste of time. And I think 11:26:1
10 it's just a way to drag the thing out. 11:26:1

11 THE COURT: Where -- where do you keep your crystal 11:26:1
12 ball? 11:26:1

13 MR. SPONAUGLE: Oh, I'm good at prediction. 11:26:1

14 That's -- 11:26:1

15 THE COURT: You seem to have a lot of insight -- or 11:26:1
16 think you do -- about what our Court's going to -- 11:26:1

17 MR. SPONAUGLE: Well, these are the same -- they had an 11:26:1
18 opportunity -- Judge, they had opportunity last fall to 11:26:1
19 jump on this thing. I mean, literally pretty much the same 11:26:1
20 issues and they denied it. They didn't want to deal with 11:26:1
21 it at that time. I've -- we've already -- you know, 11:26:1
22 they've had one opportunity -- 11:26:1

23 THE COURT: So you -- you think they want discovery on 11:26:1
24 all this stuff to take place -- 11:26:1

1 MR. SPONAUGLE: I do. I do.

11:26:4

2 THE COURT: -- and then they're going to jump on it.

11:26:4

3 MR. SPONAUGLE: I do. I think way -- in that point in
4 time they want a record.

11:26:4

5 THE COURT: Well, I hate to disagree with you, but I
6 think that's the last thing they want to do. Seems like
7 the only person that wants to jump on this is you. So I
8 don't know.

11:26:5

11:26:9

11:27:0

11:27:0

9 So you're basically telling me that you oppose
10 the certified questions because --

11:27:1

11:27:1

11 MR. SPONAUGLE: It's -- it's --

11:27:2

12 THE COURT: -- you want the discovery process to take
13 place.

11:27:2

11:27:2

14 MR. SPONAUGLE: I do. I do.

11:27:2

15 And it's your -- clearly, it's your discretion
16 what you want to do with it. It's under the rules. It's
17 up to you, but that's -- that's my belief. And that's why
18 I attempted to do it last fall. I did so I wouldn't have
19 to bother this court again with it and get it up -- fast
20 track it. I think it's just going to delay it and we're
21 going to continue to beat this around down here for six
22 months. If this goes up, they may -- and they may take it
23 up. They may take up those certified questions. And they
24 may deal with it or deny it, but they're going to need more

11:27:3

11:27:3

11:27:3

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11:27:4

11:27:4

1 evidence on it. 11:27:1

2 THE COURT: Yeah. Well, okay. 11:27:1

3 Let me hear what -- are you going to respond, 11:27:1
4 Mr. Terwilliger? 11:27:1

5 MR. TERWILLIGER: Yes, if I may. Thank you, Your 11:27:1
6 Honor. 11:28:0

7 I really think the answer is pretty simple and 11:28:0
8 it's kind of common sense. The -- it's almost impossible 11:28:0
9 for you to control discovery in a -- in a case where we 11:28:0
10 don't even know precisely what the legal issues are. 11:28:0
11 That's what the purpose of the questions are. Is to define 11:28:0
12 what the law is that would apply to the further proceedings 11:28:0
13 in the case. And it seems to make perfect sense to us that 11:28:0
14 the appropriate thing do is to ask -- since it is a novel 11:28:0
15 question of first impression at best -- to ask the supreme 11:28:0
16 court of appeals to -- to address those issues. 11:28:0

17 THE COURT: Does there have to be an agreement on the 11:28:0
18 questions in order to do that, Mr. Terwilliger? 11:28:0

19 MR. TERWILLIGER: I don't believe there has to be 11:28:0
20 agreement on the questions, Your Honor. It -- it is 11:28:0
21 incumbent on the Court to certify the questions and to -- 11:28:0
22 we've also moved for findings of fact and conclusions of 11:29:0
23 law, which would support the -- the proceedings in the -- 11:29:0
24 in the supreme court. But there are really no -- there's 11:29:0

1 no factual dispute here that's of moment to the legal issue 11:29:
2 that the petitioner has -- has presented. Everybody knows 11:29:
3 what the constitution says. We just don't know how a court 11:29:
4 could possibly administer whatever that requirement meets. 11:29:

5 THE COURT: Well, yeah. I think everybody knows what 11:29:
6 the legal issue is, but they don't know what all the facts 11:29:
7 are. 11:29:

8 MR. TERWILLIGER: But there are no facts that are 11:29:
9 really necessary to the resolution of the legal issues that 11:29:
10 this petition presents. Because it's not about whether or 11:29:
11 not the -- the governor resides here. It's -- it's what 11:29:
12 constitutes residing. What is the manner in which he 11:29:
13 executes meeting that responsibility. And as the papers 11:30:
14 that have been filed in the case point out, at -- at the 11:30:
15 very least the threshold question is, is mandamus available 11:30:
16 even to address that kind of discretionary exercise of -- 11:30:
17 of executive responsibility. 11:30:

18 THE COURT: Well, like I said, I reviewed the questions 11:30:
19 submitted by the governor. I'm not so sure I agree with 11:30:
20 all of them. 11:30:

21 MR. TERWILLIGER: Well, what could we do to help you 11:30:
22 with that, Your Honor? 11:30:

23 THE COURT: Not sure. I mean, I would -- I would have 11:30:
24 my own ideas how I would phrase the questions. 11:30:

1 MR. TERWILLIGER: I can appreciate that, because 11:30:5
2 there's certainly more than one way to do it. 11:30:5

3 If you wanted to give us some guidance and have 11:31:0
4 us -- 11:31:0

5 THE COURT: Yeah. 11:31:0

6 MR. TERWILLIGER: -- resubmit, we'd be happy to do 11:31:0
7 that. 11:31:0

8 THE COURT: And I think I have to answer the questions, 11:31:0
9 right? 11:31:0

10 MR. TERWILLIGER: Yes. 11:31:0

11 And we could -- we can issue -- I mean, we could 11:31:0
12 put together a proposed order to that effect. 11:31:0

13 THE COURT: Uh-huh. As -- if I would choose to go with 11:31:0
14 the alternative -- and that is enter a -- a more detailed 11:31:0
15 order denying your-all's motion -- wouldn't that -- and 11:31:0
16 you-all appeal that -- 11:31:0

17 MR. TERWILLIGER: Yeah. 11:31:0

18 THE COURT: -- which I assume that's why; you know, you 11:31:0
19 want the order. 11:31:0

20 MR. TERWILLIGER: Yes. 11:31:0

21 THE COURT: Would that perhaps answer some of the 11:31:0
22 questions? 11:31:0

23 MR. TERWILLIGER: It would certainly -- it would frame 11:31:0
24 and answer some of the questions. 11:31:0

1 THE COURT: Has -- correct me if I am wrong, but you're 11:32:0
2 not asking for both. 11:32:1

3 MR. TERWILLIGER: For both? 11:32:1

4 THE COURT: Yeah. 11:32:1

5 MR. TERWILLIGER: No, sir. 11:32:1

6 THE COURT: Which process would take the longest? The 11:32:2
7 detailed order and the appeal or -- 11:32:2

8 MR. TERWILLIGER: May I, Your Honor? 11:32:3

9 THE COURT: Sure. 11:32:3

10 MR. TERWILLIGER: Let Mr. Pogue address this. 11:32:3

11 MR. POGUE: I don't know that there would be a huge 11:32:3
12 difference. I suspect that certifying the questions would 11:32:3
13 be a little bit shorter because you don't have -- you'd 11:32:3
14 have to write a more detailed order for the writ of 11:32:4
15 probation. And then we'd have to file the petition of writ 11:32:4
16 of probation and then the court would have to give him an 11:32:4
17 opportunity respond to it. And then the court would either 11:32:5
18 issue a rule to show cause or decline to issue a rule to 11:32:5
19 show cause. I think there are more steps in that process. 11:32:5
20 Where as if you certified questions, the court just sets a 11:33:0
21 scheduling order. We brief the -- 11:33:0

22 THE COURT: They're not even in session now, are they? 11:33:0

23 MR. POGUE: I don't know the answer to that, Your 11:33:1
24 Honor. 11:33:1

1 THE COURT: I don't think -- I don't think they come 11:33:1
2 back until September. I don't know. 11:33:1

3 MR. SPONAUGLE: I think you're right. 11:33:2

4 MR. CAREY: I think that's right. 11:33:2

5 MR. SPONAUGLE: I think you're right on that. 11:33:2

6 THE COURT: Well, okay. What else do you-all have to 11:33:2
7 say regarding your request for certified questions? 11:33:3

8 MR. TERWILLIGER: I think we've said our -- pardon me? 11:33:4

9 Excuse me, Your Honor. 11:33:4

10 I guess the other point is we did also ask in 11:33:4
11 that motion for staying discovery. Just doesn't make any 11:33:5
12 sense to proceed if we're going to go this way. 11:33:5

13 THE COURT: Go which way? 11:34:0

14 MR. TERWILLIGER: Go with either certified questions or 11:34:0
15 reformulated order until we get the legal questions 11:34:0
16 addressed and answered. 11:34:1

17 THE COURT: Okay. 11:34:1

18 MR. TERWILLIGER: And I would point out, Your Honor, in 11:34:1
19 the -- in the first interrogatory responses we filed I 11:34:1
20 think the -- the problem is actually further identified 11:34:1
21 there because it takes some issue with what the petitioner 11:34:1
22 said was a factual dispute. Governor said he does reside 11:34:2
23 in the capitol as that term is used in the -- in the 11:34:2
24 constitution, though, it's a matter of what constitutes 11:34:4

1 residing. 11:34:4

2 THE COURT: He said that how? When? Where? 11:34:4

3 MR. TERWILLIGER: In answers to interrogatories, which 11:34:4
4 were -- were filed last week or early this week -- 11:34:4

5 THE COURT: Oh, I haven't seen them. 11:34:4

6 So he says he doesn't reside? 11:34:4

7 MR. TERWILLIGER: As that term is used in the 11:34:4
8 constitution, yes. Among other things that he says in that 11:34:4
9 answer, but he did say that. 11:35:0

10 THE COURT: Huh. There you go, Mr. Sponaugle. He 11:35:0
11 resides in Charleston. 11:35:0

12 MR. SPONAUGLE: He doesn't. 11:35:0

13 THE COURT: Pardon? 11:35:0

14 MR. SPONAUGLE: He doesn't admit that. I asked for 11:35:0
15 admissions. "Admission one, please admit that you have not 11:35:0
16 resided in West Virginia Mansion located 1716 Kanawha East 11:35:0
17 Boulevard, Charleston, West Virginia, since January 16, 11:35:0
18 2017." 11:35:0

19 "Respondent objects to this request on the 11:35:0
20 grounds that the term reside is it not defined. That the 11:35:0
21 meaning of reside is vague and varies by context and there 11:35:0
22 is no legal authority setting forth the various -- or 11:35:0
23 specific parameters of the character of the amount of time 11:35:0
24 a person must spend in the given location in order to be 11:35:0

1 deemed residing there. To the extent that respondent must 11:35:4
2 nevertheless attempt to admit or deny this request 11:35:4
3 respondent without waiving the forgoing objections denies 11:35:4
4 the request." 11:35:4

5 Interrogatory number one, I asked for your name, 11:35:4
6 date of birth, and address. 11:35:4

7 Answer, respondent objects to this vague -- this 11:36:0
8 request as vague insofar as the respondent has more than 11:36:0
9 one address. Without waiving said objection given that 11:36:0
10 this action has been filed against respondent in official 11:36:0
11 capacity as governor of the State of West Virginia, 11:36:0
12 respondent states that the Office of the Governor is 11:36:0
13 located at the West Virginia State Capitol, 1900 Kanawha 11:36:0
14 Boulevard East, Charleston, West Virginia. It's like that 11:36:0
15 throughout them. 11:36:0

16 So to get -- and when we -- I think the Court at 11:36:0
17 least certainly took up -- last time when we were here 11:36:0
18 before the Court on June 5th -- State -- Linger versus 11:36:0
19 County Court of Upshur County -- I was certainly sitting 11:36:0
20 forth there that day -- two fundamental elements are 11:36:0
21 essential to create a residence. These elements are bodily 11:36:0
22 presence in a place and the intention of remaining in that 11:36:0
23 place. Residence is thus made up of fact and intention. 11:36:0
24 The fact of abode and intention of remaining and a 11:36:0

1 combination of the acts and intention. Neither bodily 11:36:4
2 presence or intentional abode will suffice to create a 11:36:4
3 residence. There must be a combination of concurrence of 11:36:5
4 these elements when they occur and at the very moment they 11:36:5
5 occur a residence is created. 11:36:5

6 Now, that's been used in Shaw v. Shaw. It's been 11:36:5
7 used to kick Joe Manchin off the ballot. It's been used 11:37:0
8 throughout. And that's the standard test. 11:37:0

9 You can't really reach an answer whether or not 11:37:0
10 he's resided at a place unless you can get facts. And he 11:37:0
11 doesn't admit -- he doesn't admit it. And I believe he's 11:37:0
12 made public remarks that says he doesn't reside there, but 11:37:0
13 in the pleadings he saying he does -- he's residing as far 11:37:0
14 as he concerns the constitution and it's vague. So we're 11:37:0
15 -- the Court -- I don't know how the Court can make a 11:37:0
16 determination if it doesn't have at least a little bit of 11:37:0
17 evidence. And you can weigh in whether or not in your mind 11:37:0
18 he's residing at the seat of government or in. And that's 11:37:0
19 -- so I -- I think you're just going to delay it. We've 11:37:0
20 been kicking this thing around for about 15 months. I'd 11:37:0
21 like -- and I haven't got a whole lot -- this is the first 11:37:0
22 -- I got this discovery packet on Monday. I haven't got 11:37:0
23 real far. I keep getting stays, continued discovery, 11:37:0
24 stayed, continued discovery, and legal arguments kicked 11:37:0

1 out. I'm sure everybody would like to move on with this, 11:37:5
2 but the only way to do that is to complete the discovery 11:37:5
3 process. 11:37:5

4 MR. TERWILLIGER: Your Honor, just to close the loop on 11:37:5
5 that, if I may? 11:37:5

6 In interrogatory request, the response 11:37:5
7 interrogatory request number one last sentence is, finally 11:38:0
8 respondent state's that he does reside -- quote unquote -- 11:38:0
9 in Charleston as specified in the constitution of West 11:38:0
10 Virginia in that he has a residence there, maintains the 11:38:0
11 office of governor there, and is physically present there 11:38:0
12 as often as he needs to be as determined by the judgment, 11:38:0
13 autonomy, and discretion inherent to his office. Which 11:38:0
14 does two things I think. 11:38:0

15 One, it's -- there no dispute about the 11:38:0
16 requirement to reside. He says that he does reside there. 11:38:0
17 If there's a dispute about that, it's a legal dispute about 11:38:0
18 what is required in order to meet the requirement to 11:38:0
19 reside. It's not a factual dispute and everything we just 11:38:0
20 heard points to that. The petitioner continuously confuses 11:38:0
21 the use and the cases of the term and I -- it's 11:38:0
22 understandable why it would be somewhat confusing because 11:38:0
23 the Courts have over time kind of merged for purposes -- 11:39:0
24 the concept of residence with domicile, but the mean 11:39:0

1 different things. We have a beautiful language in English 11:39:1
2 and no two words mean exactly the same. Residence may not 11:39:1
3 even mean live in a particular place. It -- it -- it has a 11:39:1
4 meaning -- but I didn't bring this up to provoke a further 11:39:2
5 legal issue discussion because, Your Honor, has been 11:39:2
6 through all that. I just merely am pointing it out for the 11:39:3
7 fact that if there's no way for you to resolve the 11:39:3
8 inevitable discovery disputes that would arise if discovery 11:39:4
9 were to proceed without the guidance of having some defined 11:39:4
10 legal parameters around the case. 11:39:5

11 THE COURT: Okay. All right. I'd like to have a 11:39:5
12 proposed order from you, Mr. Sponaugle, regarding the 11:39:5
13 issues we've discussed today, please. 11:40:0

14 And, Mr. Carey, Mr. Terwilliger, the same thing. 11:40:0

15 And I'll resolve it -- 11:40:1

16 MR. TERWILLIGER: All right. 11:40:1

17 THE COURT: -- whether I'm going to use the certified 11:40:1
18 questions or detailed order. And as right now I'm going to 11:40:1
19 further this case -- stay discovery. 11:40:2

20 MR. TERWILLIGER: Thank you, Your Honor. 11:40:2

21 THE COURT: You have an objection on the record, 11:40:3
22 Mr. Sponaugle. 11:40:3

23 MR. SPONAUGLE: Yes, Your Honor. 11:40:3

24 THE COURT: Okay. 11:40:4

1 MR. SPONAUGLE: And question for the Court on the 11:40:3
2 detailed order, I think their motion is asking for the 11:40:4
3 June 5th hearing. Are you wanting me to resubmit the 11:40:4
4 order? 11:40:4

5 Is that what you-all are asking? A more verified 11:40:4
6 order on the motion to dismiss? 11:40:4

7 MR. CAREY: Right. 11:40:5

8 MR. SPONAUGLE: So they want a more detailed order from 11:40:5
9 the June 5th hearing. You want me to submit something on 11:40:5
10 that or are you going to do that yourself? 11:40:5

11 THE COURT: No. I'd like you to submit something. 11:40:5

12 MR. SPONAUGLE: For the June 5th hearing? 11:41:0

13 THE COURT: Yeah. 11:41:0

14 MR. SPONAUGLE: Okay. 11:41:0

15 THE COURT: On what they want to take up on appeal. 11:41:0

16 MR. SPONAUGLE: Okay. 11:41:0

17 THE COURT: And you too. 11:41:0

18 MR. CAREY: Yes, Judge. Thank you. 11:41:0

19 I just -- as a matter of clarification, Judge, 11:41:0
20 since we have two pending motions and they're not -- 11:41:1
21 they're mutually exclusive. We want one or the another. 11:41:1

22 THE COURT: Right. 11:41:1

23 MR. CAREY: Would you like a proposed order granting 11:41:1
24 both? Is that how you would like that? 11:41:1

1 THE COURT: No. Just an order dealing with the more 11:41:0
2 detailed order. Okay? 11:41:0

3 I'm capable of denying the certified questions 11:41:0
4 myself. 11:41:0

5 MR. CAREY: Okay. Now I understand. 11:41:0

6 THE COURT: Are we clear? 11:41:0

7 MR. SPONAUGLE: Yeah. 11:41:0

8 THE COURT: Anything else? 11:41:0

9 Now, as of right now we have no dates in the 11:41:0
10 future for anything, do we? 11:41:0

11 MR. CAREY: That's correct, Your Honor. 11:41:0

12 MR. SPONAUGLE: Just put in the order continue to 11:41:0
13 generally at the bottom of these orders? I guess we can 11:41:0
14 bring it back on when it's time to be on those -- 11:42:0

15 THE COURT: Well, I'm going to grant either the 11:42:0
16 certified questions or the detailed order. I think the 11:42:0
17 detailed order, unless I go with the certified questions, I 11:42:0
18 have to grant. 11:42:0

19 MR. SPONAUGLE: Right. 11:42:0

20 THE COURT: Because they have an absolute right to it I 11:42:0
21 think under the rules and they've requested. So I assume 11:42:0
22 that if I do that, go with the detailed order, they're 11:42:0
23 going to take it up, which, you know, would eliminate any 11:42:0
24 proceedings here. 11:42:0

1 MR. SPONAUGLE: Okay. 11:42:4

2 THE COURT: At least until they -- the Court resolves 11:42:4
3 it. 11:42:4

4 MR. SPONAUGLE: Okay. 11:42:4

5 THE COURT: Okay. Anything else? 11:42:4

6 MR. TERWILLIGER: Thank you very much. 11:42:4

7 THE COURT: Thank you. 11:42:4

8 MR. SPONAUGLE: Thank you, Your Honor. 11:42:4

9 MR. TERWILLIGER: Thanks again. 11:42:4

10 (Hearing adjourned at 11:42 a.m.)

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1 STATE OF WEST VIRGINIA,
2 COUNTY OF KANAWHA, to wit:
3

4 I, Chelsea Sivori, Official Reporter of the
5 Circuit Court of Kanawha County, West Virginia, do hereby
6 certify that the foregoing is a true and correct transcript
7 of the proceedings had in STATE OF WEST VIRGINIA, ex rel.,
8 G. ISAAC SPONAUGLE, III. West Virginia citizen and taxpayer
9 VS. JAMES CONLEY JUSTICE, II, Governor of the State of West
10 Virginia, Civil Action No. 2018-P-442, on Wednesday, the
11 21st day of August, 2019, as reported by me in machine
12 shorthand.

13 I hereby certify that the transcript within meets
14 the requirements of the Code of the State of West Virginia,
15 Section 51-7-4, and all rules pertaining thereto as
16 promulgated by the Supreme Court of Appeals.

17 Given under my hand this 23rd day of August, 2019.
18
19

20
21 
22 Official Reporter, Circuit Court
23 of Kanawha County, West Virginia
24